

the D.C. Circuit in Bechtel v. FCC, 957 F.2d 873 (D.C. Cir. 1992) and Flagstaff Broadcasting Foundation v. FCC, 979 F.2d 1566 (D.C. Cir. 1992). Scripps Howard contends that "when the Commission has actually considered the merits of the integration policy, it has conceded that the policy lacks any firm support." (Motion, p. 2). However, Scripps Howard goes on to acknowledge that the Commission defended the continued application of the integration policy in Anchor Broadcasting Limited Partnership, 7 FCC Rcd 4566 (1992).^{1/}

2. Both the Bechtel and Flagstaff cases were remanded so that the Commission could more fully explain why its focus on integration is in the public interest. Bechtel v. FCC, supra at 881; Flagstaff Broadcasting Foundation v. FCC, supra at 1570-71. In Flagstaff, the Court stated that "Bechtel did not require the Commission to abrogate its current requirement of 'integration of ownership into management.'" 979 F.2d at 1567. The Anchor Broadcasting case is the Bechtel case on remand.

3. Scripps Howard's argument appears to be that because there is a pending rulemaking proceeding concerning the possible modification of the integration criterion, its issue should be added. There is no precedential support for the position advanced by Scripps Howard. In fact, the Commission has already addressed this argument and rejected it. The Commission has explicitly held that the criteria of the Policy Statement on

^{1/} Scripps fails to mention the Commission's further March 10, 1993 Memorandum Opinion and Order in Anchor Broadcasting, 8 FCC Rcd 1674, which reiterated the Commission's intent to continue to apply the integration criterion.

Comparative Broadcast Hearings, 1 F.C.C.2d 395 (1965) are to be applied to pending applications and that the reexamination rulemaking does not warrant holding cases in abeyance. See Anchor Broadcasting Limited Partnership, supra, modified, 8 FCC Rcd 1674 (1993); Intermart Broadcasting Gulf Coast, Inc., FCC 93R-13 (Rev. Bd., released April 30, 1993), para. 5. HS Communications, Inc., 7 FCC Rcd 6448, n.2 (Rev. Bd. 1992).

4. Furthermore, although the Commission is in the process of reviewing its 1965 comparative criteria, it is clear that subordinate bodies, such as the Review Board and the Judge, lack the authority to anticipate the outcome of that proceeding or to depart from the 1965 Policy Statement. Emission De Radio Balmeseda, Inc., 7 FCC Rcd 3852 (Rev. Bd. 1992). Ownership and integration are so inextricably intertwined that any change in Commission policy must come from the Commission based on a rulemaking proceeding. Thus, there is no basis for adding the issue requested by Scripps Howard.^{2/}


Accordingly, for the foregoing reasons, the "Motion to Enlarge Issues to Add an Issue Considering Use of Professional

2/ In its Motion, Scripps Howard alternatively requests that Four Jacks "receive no credit for integration, irrespective of its showing on that issue." There is absolutely no basis for this request.

Management," filed by Scripps Howard Broadcasting Company, should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sybil Briggs, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "OPPOSITION TO "MOTION TO ENLARGE ISSUES TO ADD AN ISSUE CONSIDERING USE OF PROFESSIONAL MANAGEMENT"" were sent this 26th day of May, 1993, by first class United States mail, postage prepaid, to the following:

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